

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE GWAGWALADA JUDICIAL DIVISION

HOLDEN AT GWAGWALADA- ABUJA

THIS MONDAY, 6TH OCTOBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/2098/2022

BETWEEN:

- 1. INCORPORATED TRUSTEES OF ALL CHRISTIANS
FELLOWSHIP MISSION**
- 2. B. O. NAFACHA. ESQCLAIMANTS**

AND

SULEIMAN KEFFI DEFENDANT

JUDGEMENT

This judgement is under undefended list procedure brought pursuant to order 35 rule 3 of the High court of the FCT civil procedure rules 2018.

The claimant claims the following

- 1. The sum of N4,000,000.00 (Four Million Naira) only being money paid for the purchase of plot No: A708-A722 situate at Dei-Dei livestock Estate –Abuja for which the Defendant could not deliver possession to the claimant.**
- 2. The sum of N150,000.00 being compensation paid by the claimant in respect of the land defendant claimed belongs to him.**

- 3. 10 % interest per annum commencing from 2006, when the money was paid to the Defendant until Judgement is given and thereafter 10% interest until Judgement debt is paid by the Defendant.**
- 4. The cost of filing this suit.**

Attached to the claim is an affidavit in support of writ of summons of 24 paragraphs deposed to by one B. O. Nafagha Esq of All Christians Fellowship Mission, Kubwa FCT, Abuja, A Pre-action Certificate of counselling also attached to the affidavit are exhibit A1, which is the receipt of sale dated the 30th April, 2006, exhibit A2 being receipt of sale from Suleiman Keffiof Bwari, Abuja from B. O. Nafagha Esq being part payment for education plot of 1.5 hectares situate at Dei-Dei Livestock layout Abuja, Exhibit A3, Receipt of sale receipt by Suleiman Keffi from B. O. Nafagha Esq the sum of N1,450,000.00 dated the 25-7-2006, Signed by both parties. Exhibit B. being the photocopy of the conveyance of provisional Approval with Reference No:MFCT/DED/ILM/VOL-1,11866 dated the 30 June, 2003 in respect of plots A708-A722. Exhibit B' F CTA Regularisation of land titles and documents of FCT Area Council with file No: ILM 1866 dated the 06/13/07, exhibit B2, being the offer of the terms of grant of conveyance of approval from the M FCT, Urban Regional Planning Department, BACZonal planning Office change of ownership dated the 26/07/2006 being whole person academy, Exhibit C' Receipt of money dated the 2-9-2008 from B.O. Nafagha to Yusuf Dantani, Exhibit D Demand for replacement for refund of N4,000,000.00 (Four Million Naira) only being money for purchase of plot No: A708-A722 Situate at Dei-Dei Livestock Estate addressed to Suleiman Keffi of Development Control, FCDA, Wuse Zone 6, Abuja. Date the 16-3-2022.

The defendant who have been duly served and under the provision of order 35 rule 3 of the High Court of FCT civil procedure rules 2018 which provides thus:

“where a party served with the writ deliver to register, before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit together with an affidavit disclosing a defence on the merit, the court may give him leave to defend upon such terms as the court may think just”

Order 35 rule 4;

“Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by Rule 3(1) or is not given leave to

defend by the court the suit shall be heard as an undefended suit and judgement given accordingly”

The claimant counsel on B. O. NafaghaEsq. informed the court that the defendant had paid the sum of N1,000,000.00 (One Million Naira) only to him as part payment and said he cannot eat the money that belongs to the church which is the claim before the court.

That base on the above, he would be withdrawing his claim of N150,000.00 being claim 2, 3, & 4. And pray the court to grant to the claimant the sum of 3,000,000.00 (N3Million) only which is the balance of this he referred this court to AMANA Community Bank Nig. Ltd V Olu (2003) FWLR-(PT.158) ratio 4 at page. 1328-1329.

It is trite that the rules of court providing for cases to be placed on undefended list are deliberately designed to allow for quick Dispensation of Justice to avoid unnecessarily clogging the legal system with proceedings which could otherwise have been easily and quickly disposed of although the need for fair hearing should not be sacrificed on the altar of expediency, the procedure should not be frustrated or thwarted by fanciful or general defence directed at frustrating the plaintiff out of judgement he well deserves.

The procedure under order 35 Rule 3 of the FCT High Court Civil Procedure rule 2018, is designed to prevent delay in cases where the plaintiff satisfies the court with affidavit evidence which the defendant cannot controvert, the court will enter judgement for the claimant thereby avoiding a full blown trial with the usual expenses, frustration and delay.

But before commencing an action under the undefended list procedure there are three steps to be taken

- 1. The plaintiff files an application for issuance of a writ of summons for a claim for liquidated money demand. The plaintiff application must be accompanied by an affidavit setting forth the grounds on which the claim is predicated and stating that in the belief of the plaintiff or deponent to the affidavit, the defendant has no defence to the plaintiff's claim.**
- 2. The court to which the applicants is made consider it ex-perte, without hearing argument to determine whether to hear the suit under the undefended list or to transfer it to general course list to be dealt with accordingly.**

3. **If the court is satisfied that there are good grounds for believing that there is actually no defense to the plaintiff's claim, the court enters the suit for hearing in the undefended list. The writ of summons is marked as such and the date for hearing is stated on it. There after all the court processes are served on the defendant, who if he desires to defend suit, must deliver to the register of the court, a written notice of his intention, to defend this suit together with affidavit disclosing a defense on the merit of the suit.**

4. **However, if after considering the affidavit in support of the defendants notice of intention to defend the suit, the court may in the basis of the fact disclosed in the affidavit of the defendant grant leave to the defendant to defend the action upon such terms as the court may deem fit.**

The essence of this procedure is for strict compliance with the relief before commencing actions on an undefended suit Procedure.

From the forgoing can it be said that, the applicant has complied with the rules?

Now to the processes filed the claimant filed a writ of summons and an affidavit in support of writ of summons under the undefended list attaching exhibits only. From the rules as stated above, the claimant has complied with the procedure as set out above.

The defendant was served with all the processes proof of service dated the 15-09-2022 and upon service on him, it is his duty to file before this court notice of his intention to defend, which he fails to do so.

By order 35 rules 4 of the High Court of the FCT, Abuja Civil Procedures Rules 2018, it provides thus:

Where a defendant neglects to deliver the notice of defence and an affidavit prescribed by rule 3(1) or is not given leave to defend by the court the suit shall be heard as an undefended suit and judgement given accordingly”

Failure by the defendant to file its notice of his intention to defend with a supporting affidavit it behold on the court to enter judgement for the claimant.

The claimant in their affidavit which I reproduced below:1-21

- 1. That I am a member and secretary of the Kubwa Village Branch of the 1st Claimant in this suit by reason of which I am quite conversant with the facts deposed hereto.**
- 2. That I have the consent and authority of the 1st Claimant to depose to this affidavit.**
- 3. That the 1st claimant is a non-profit organization duly registered under the laws of the Federal Republic of Nigeria.**
- 4. That between 2005 and 2006, the Defendant was the Zonal Land Manager of Bwari Area Council, Abuja.**
- 5. That as at that time, the 1st Claimant needed a land for establishment of a school in Kubwa, Bwari Area Council-Abuja.**
- 6. That I approached the Defendant who was the Zonal Land Manager and he told me that he has a land of 1.5 Hectares situate in Dei-Dei which is for educational purpose.**
- 7. that as the Zonal Land Manager, he opened a layout where I saw the position of the plot in the layout and he gave me every assurance that the plot is genuine and in existence.**
- 8. That I Negotiated for the plot with the Defendant and we agreed for the sum of N4,000,000.00 (Four Million Naira) only.**
- 9. That we duly paid him the sum of N4,000,000.00 (Four Million Naira) only in several installments. Some of their receipts he issued upon payments are hereto attached and marked as EXH. "A1-A3".**
- 10. That upon completion of payments, the Defendant gave us the Letter of Allocation. Acopy of the Letter of Allocation is hereto attached and marked as EXH. "B".**
- 11. That the land is situate in the boundary between Abuja and Niger State.**

- 12. That after the defendant gave us the letter of Allocation, he asked one Surveyor Iyke Ohamme who is in charge of the layout to take us to see the plot on ground.**
- 13. That when I went with the said Surveyor Iyke Ohamme, we were not allowed into the site of the layout as some youths insisted that we must pay the sum of N150,000.00 (One Hundred & Fifty Thousand Naira) only before we will be allowed access to the plot.**
- 14. That the 1st Claimant released the sum of N150,000.00 (One Hundred & Fifty Thousand Naira) only which we paid to the then president of the community. A copy of the receipt issued by the then Youth Leader is hereto attached and marked as EXH. "C".**
- 15. That after the payment of his money, we again tried to gain access but we were again driven by Indigenes of Dakwa, Niger State who claimed that the land belongs to them and not FCT.**
- 16. That we immediately alerted the defendant who told us that he will do his best to give us possession.**
- 17. That since then, we have been waiting upon Defendant to give us possession of the parcel of land which the Church paid for.**
- 18. That for the above reasons, we have not been able to sign any deed of Transfer of Ownership of the plot from the Defendant to the 1st Claimant.**
- 19. That in January, 2022 we went to the land and discovered that the whole land has been built and occupy by Dakwa Indigenes of Niger State.**
- 20. That it is only proper that the defendant should refund the money the claimant paid for the said parcel of the land as money paid without consideration.**
- 21. That claimants have been demanding for the refund of the said sum paid to the Defendant, a copy of one such letter of demand written and served on the Defendant is hereto marked EXH. "D"**

From the affidavit clause 8, 9, 10, 13 14, & 21 so specific that the claimant expended money to the defendant and failure thereof, the claimant wrote a demanding for the refund of the said sum paid to the Defendant, a copy of one such letter of demand written and served on the defendant- exhibit D

Clauses, 9, as captured from the affidavit:

“that we duly paid him the sum of N4,000,000.00 (Four Million Naira) only in several instalments. Some of the receipts he issued upon payments are hereto attached and marked as exhibit A1-A3

Exhibit A1: - Receipt of sale 30th April, 2006:

“I SULEIMAN KEFFI of land Zonal Manager, Bwari, Bwari Area Council Abuja has collected the sum of N1,200,000.00 (One Million Two Hundred Thousand Naira) only from B. O. NAFAGHA ESQ of Edefe Chambers, Suite 11B, Plot 526, Sabondale Shopping Complex, Obafemi Awolowo Way, Beside Mr. Biggs. Jabi District, Abuja as part payment for the sale of 1.5 Hectares plot of land for School purpose situate in Dei-Dei Livestock Estate Layout.

The balance of N2,800,000.00 shall be paid within two months.

Exhibit A2- Receipt of sale:

“I Suleiman Keffi, of Bwari Abuja have collected the sum N450,000.00 (Four Hundred and Fifty Thousand Naira) only from B. O. NAFAGHA ESQ as part bpayment for Education plot 1.5 Htrs situate at Dei Dei Livestock Layout Abuja leaving the balance of N50,000.00 (Fifty Thousand Naira) only.

Dated this 17th day of October, 2006.

Exhibit A3 – Receipt of sale:

“I Suleiman Keffi, of Bwari Abuja have collected the sum N1,450,000.00 (One Million Four Hundred and Fifty Thousand Naira) only from B. O. NAFAGHA ESQ as part payment for Education plot 1.5 Htrs situate at DeiDei Livestock Layout Abuja.

Dated this 25th day of July, 2006.

The said exhibit A1-A3 added together will amount to N3,100,000.00 (Three Million, one Hundred Thousand Naira) only.

Then exhibit C being receipt of money of the sum of N150,000.00 for the settlement of indigene for peaceful settlement of the school land in Dei-Dei livestock layout added to the previous calculation of N3,100,000.00 will bring the total to N3,250,000.00 (3 Three Million, Two Hundred and Fifty Thousand Naira only).

The claimant counsel while moving the writ of summon with the supporting affidavit stated that, on the 23 September, 2022 the Defendant paid him the sum of N1,000,000.00 (One Million Naira) only as part of payment and told him that he cannot eat the money of the church which is the claimant.

That based on the forgoing they will be withdrawn their claim of N150,000.00 and urge the court to grant the claim of N3,000,000.00 (Three Million Naira only being the balance pursuant to order 35(4) of High Court of the FCT, Abuja civil procedure Rules 2018 which provides thus.

“where a defendant neglects to deliver the notice of defence and an affidavit prescribed by rules 3(1) or is not given leave to defend by the court the suit shall be hard as an undefended suit and Judgement given accordingly”

On this he referred this court to the case of **Amana Community Bank Nig Ltd V Olu (2003) FWLR (PT.158) 1308 Ratio 4 of Page 1328-1329.**

From the forgoing I can say that it is a contract entered between the parties which has failed.

In a valid or binding contract, means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. There are three basic essentials to the creation of a contract. These are.

- i. Agreement**
- ii. Contractual intention and**
- iii. Consideration.**

Therefore, the normal test for determination whether the parties have reached agreement is to ask whether an offer has been made by one party and accepted by the other. See **Akinyemi V OduaInv Co Ltd (2012) 17 NWLR Pt. 209 (SC).**

It is trite law, that if parties enter into an agreement, they are bound by its term. put differently where parties enter into or agreed in a solemn contract, they are expected to honour its term. See **Con Oil V Vitols S. A. (2018) 9 NWLR (PT. 1625) 463**. It is there pertinent to reiterate the position of the law that parties are bound by the terms of their agreement freely entered into and duly executed by them. See **Dalek Nig Ltd V OMPADEC (2007) 7 NWLR (PT. 1033)** it is the duty of every responsible citizen to honour the obligation in an agreement he has voluntarily entered into. Public policy in Nigeria supports the fact that obligations entered into Voluntarily between themselves. See **E.A. Ind. Ltd V NERFUND (2009) 8 NWLR (PT.1144) 535 CA**.

In view of the above and in accordance to order 10(3) of the High Court of the FCT civil procedure Rules 2018, which provides thus:

“where the claim in the originating process is a liquidated demand and a defendant or any of the defendants fails to appear a claimant may apply to the court for judgement on the claim in the originating processes or such interest as the court may order.

In this case the claimant upon the filing of this suit, cause service to be effected on the defendant who did not take steps to file its statement of defence or notice of his intention to defend. By virtue of order 35 rules 4 of the High Court of FCT civil procedure rules 2018, where a defendant neglects to deliver the notice of defence and an affidavit prescribed by rule 3 (1) or is not given leave to attend by the court the suit shall be heard as an undefended suit and judgement given accordingly.

A careful perusal of the verified affidavit and the submission of counsel to the claimant, I am not in thought to say that the claimant has done what the law requires and in total compliance with the rules of this court. Therefore, failure on the defendant to file his notice of his intention to defend together with affidavit meant that he has no defence to claim of the claimant.

Hence I shall give judgement to the claimant as per his claim, of the sum of N3,000,000.00 (Three Million) Naira only.

To pass forward the defendant having paid the sum of 1,000,000.00 (One Million Naira) only to the claimant as part payment of the total sum of N4,000,000.00 (Four Million) only and having agreed to forfeit it claim 2,3, & 4 I shall then give Judgement to the claimant in the sum of N3,000,000.00 (Three Million Naira) only as against the Defendant, the said money being the cash collected from the claimant for the purchased of plot No: A708A-722 Situate at Dei-Dei livestock Estate Abuja which said contract failed.

This is my Judgement.

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HON. JUSTICE A. Y. SHAFI

APPEARANCE:

1. Ismail Usman Ude with Development Control Zone 6 FCDA.
Represented the Defendant.